In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1098

KATHERINE F. MILLER AND JOSEPH M. DeTOTA, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Each year, the Genesee Valley Club, a social club, solicited from its members contributions to an Employees' Christmas Fund. The Club then distributed the fund among its employees in proportion to each employee's length of service and salary. Both courts below found that the payments were made "to reward past services and encourage the faithful performance of duties in the future" (Pet. 19, 32). They accord-

ingly held that the payments were includible in the employees' income as compensation in the nature of bonuses or tips and were not "gifts" excludible from income under § 102(a) of the Internal Revenue Code of 1954. The decision is correct. See *Commissioner* v. *Duberstein*, 363 U.S. 278; *Roberts* v. *Commissioner*, 176 F. 2d 221 (C.A. 9); *Levey* v. *Helvering*, 68 F. 2d 401 (C.A. D.C.); Income Tax Regs. (1954 Code), § 1.61-2(a)(1). There is no conflict of decisions or other reason for review. The petition for certiorari should be denied.

Respectfully submitted.

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JUNE 1964

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 733881 1030